

**Grant and Security Agreement Between the  
PUBLIC SERVICE COMMISSION OF WISCONSIN  
and  
[Insert Name of Grant Recipient]**

**THIS GRANT AND SECURITY AGREEMENT** is made and entered into by and between the Public Service Commission of Wisconsin (the “**Commission**”), representing the State of Wisconsin (“**State**”), and [Insert Name of Grant Recipient] (“**Grant Recipient**”) (collectively “**Parties**”) as of [Month] [Day], [Year] for the [Insert Name of Project] Project.

**WHEREAS**, pursuant to Wis. Stat. §196.504 (2)(a), the State’s Legislature created the Broadband Expansion Grant program (the “**Program**”) for the purpose of constructing broadband infrastructure in underserved and unserved areas of the State;

**WHEREAS**, pursuant to Wis. Stat. §13.48 (30), the Wisconsin State Building Commission (the “**Building Commission**”) may authorize the issuance of general obligations of the State in an amount up to \$125,000,000 to fund grants under the Program (“**State Bonds**”);

**WHEREAS**, the Wisconsin Constitution limits the purposes for which the State may contract public debt, which includes an allowance for the State to issue general obligation bonds for the purpose of acquiring, constructing, developing, extending, enlarging, or improving land, waters, property, highways, railways, buildings, equipment, or facilities for public purposes;

**WHEREAS**, pursuant to that limitation, grants issued under the Program that are funded with proceeds of State Bonds (“**Bond Financed Grants**”) shall continue to be used for public purpose for which they were issued during the period in which the State Bonds that funded such Bond Financed Grants are no longer outstanding;

**WHEREAS**, on behalf of the State, the Commission administers the Program to provide funds for eligible activities;

**WHEREAS**, the Legislature has found and determined that the expanding broadband internet services is of vital importance to the economy, workforce and improving the wellness of Wisconsinites living in rural and remote areas and access to reliable internet in Wisconsin and that the promotion of this industry would greatly benefit state residents;

**WHEREAS**, the Commission has determined that the expansion of broadband internet in the city of [\_\_\_\_], county of [\_\_\_\_] under the [Insert Name of Project] Project (described in Attachment B - Project Scope) meets the Legislature’s intent and is in the public interest;

**WHEREAS**, it is the intention of the Parties to this Agreement that all activities described herein shall be for their mutual benefit;

**WHEREAS**, pursuant to the Commission’s Order ([insert link]) dated [Month] [Day], [Year] in docket 5-BF-2022, the Commission approved an award of up to [amount] to the Grant Recipient for eligible activities related to the [Insert Project Name] project;

**WHEREAS**, the terms and conditions of this Agreement shall survive the Performance Period and shall continue in full force and effect until the Grant Recipient has completed and is in compliance with all the requirements of this Agreement; and

**WHEREAS**, this Agreement is exclusive of and is distinguished from all previous agreements between the Grant Recipient and the Commission and contains the entire understanding between the Parties.

**NOW, THEREFORE**, in consideration of the mutual promises and dependent authorizations, the Parties agree as follows:

The following documents are incorporated and made part of this Agreement:

- 1) The attached Terms and Conditions Applicable to Grant Agreement (last updated 02/2022).
- 2) Attachment A – Security Interest Provisions.
- 2) Attachment B – Project Scope.
- 3) Attachment C – Project Budget.
- 4) Attachment D – Reporting Requirements.
- 5) Attachment E – Payment Request Form sample.
- 6) Attachment F – Commission Order.
- 7) Attachment G – Compliance Certification Form.
- 8) Attachment H – Pledged Collateral.
- 9) Attachment I – Form of Bill of Sale.
- 10) Attachment J – Form of Use Restriction Agreement.

[Grant Recipient]	Public Service Commission of Wisconsin
By: _____	By: _____
[Name]	Kristy Nieto
Title: []	Title: Administrator, Division of Digital Access, Consumer and Environmental Affairs
Address: _____	Address: North Tower, 6 <sup>th</sup> Floor
_____	Hill Farms State Office Building
_____	4822 Madison Yards Way
_____	Madison, WI 53705
_____	(608) 261-9419
Date: _____	Date: _____
DUNS Number: _____	
Dun & Bradstreet Unique Number 9-digit _____	
Assistance Listing Number: _____	

## TERMS AND CONDITIONS APPLICABLE TO GRANT AGREEMENT

- 1.0 **Definitions.** The following terms are given the stated meaning:
- 1.1 **Bill of Sale.** Bill of Sale means the bill of sale covering the assets acquired with proceeds of the Grant, delivered by the Grant Recipient, at the Commission's request or another state entity designated by the Commission's request, in the form attached hereto as Attachment I – Form of Bill of Sale.
  - 1.2 **Broadband Facility.** Broadband Facility means the wireless and wireline switching, transmission and transport infrastructure, hardware and software necessary to originate and terminate voice, data, graphics, and video telecommunications at speeds and data capacity greater than that available over the Public Switched Telephone Network. Broadband Facility does not include the wireless transmission, transport and switching of Commercial Mobile Radio Service regulated under 47 U.S.C. s. 301 et seq.
  - 1.3 **Commission.** Commission means the Public Service Commission of Wisconsin, including its agents who have been delegated authority by the Public Service Commission of Wisconsin.
  - 1.4 **Commission Order.** Commission Order means the Commission's Order on [\_\_\_\_] Applications in docket 5-BF-2022 as attached hereto as Attachment F – Commission Order.
  - 1.5 **Eligible Costs.** Eligible Costs means those costs which are not covered by any other federal or state funding; subject to audit by the Commission; are directly attributable to activities identified in Attachment B – Project Scope; are identified in Attachment C – Project Budget, subject to any Amendments to this Agreement.
  - 1.6 **Grant Application.** Grant Application means the Project-specific request submitted by the Grant Recipient in response to the application instructions issued by the Commission in the docket underlying the Commission Order.
  - 1.7 **Grant Award.** Grant Award means the Commission Order as it applies to the Grant Application, which identifies the funds awarded to the Grant Recipient for the Project identified in Attachment B – Project Scope, including any specified other terms and conditions that apply to a specific approved Grant Application.
    - 1.7.1 The Grant Award supersedes any representations, commitments, conditions, or agreements made orally or in writing prior to the issuance of the Grant Award.
    - 1.7.2 The Grant Award may specify an award amount and other terms and conditions that are different from, or in addition to, those proposed in the Grant Application.
  - 1.8 **Grant Recipient Contractor.** Grant Recipient Contractor means any of Grant Recipient's authorized subcontractors, affiliates, subsidiaries, subgrantees, subrecipients, or any other third party acting on behalf of or at the direction of Grant Recipient, directly or indirectly, in performing or providing the Project(s) under this Agreement.
  - 1.9 **Grant Recipient Personnel.** Grant Recipient Personnel means employees, agents, independent contractors, or any other staff or personnel acting on behalf of or at the direction of Grant Recipient or any Grant Recipient Contractor performing or providing the Project(s) under this Agreement.
  - 1.10 **Performance Period.** Performance Period means the period from the date of this Agreement until [Month] [Day], [Year].

- 1.11 **Pro Rata Ownership Interest.** Pro Rata Ownership Interest means the percentage of the Broadband Facility owned by the Commission or another state entity designated by the Commission which is equivalent to the ratio of the bond financed grant to the Total Project Cost.
  - 1.12 **Project.** Project means the Broadband Facility and activities described in Attachment B – Project Scope.
  - 1.13 **Request for Payment.** Request for Payment means a complete request submitted, by Grant Recipient, in the format and the timeframe specified by the Commission for payment of funds from a Grant Award.
  - 1.14 **Secured Obligation.** Secured Obligation means the obligation of the Grant Recipient to (i) use the Grant and the Broadband Facility solely for the purposes provided for in this Agreement; and (ii) deliver an executed Bill of Sale if and when required by Section [ ].
  - 1.15 **Bond Term.** Bond Term means the period from the date of this Agreement until the later of the end of the Performance Period and the date on which the State Bonds that financed a related Bond Financed Grant are no longer outstanding.
  - 1.16 **Total Award.** Total Award means the total dollar amount approved for Grant Award in the Commission Order.
  - 1.17 **Total Project Cost.** Total Project Cost means the Total Award plus any match committed by the Grant Recipient or any non-State third parties as identified in Attachment C – Project Budget.
  - 1.18 **Use Restriction Agreement.** Use Restriction Agreement means that certain agreement in substantially the form attached here to as Attachment J – Form of Use Restriction Agreement, by and between the Grant Recipient and the Commission or another state entity designated by the Commission, entered into in connection with the Broadband Facility, which may be recorded in accordance with its terms.
- 2.0 **Interpretation.** The Commission retains jurisdiction over the interpretation of the Commission Order and this Agreement, including these Terms and Conditions Applicable to Grant Awards (Terms and Conditions) and any other Attachments to this Agreement. Regardless of which of the Parties is responsible for the drafting of the Agreement between the Parties, all terms will be construed in favor of the Commission. By executing this Agreement, the signatories in no way bind the Commission other than for purposes of funding the Grant Awards as authorized by the Commission Order. In the case of conflict between any part of this Agreement and the Commission Order, the Commission Order will control.
- 3.0 **Reimbursement.** The following conditions apply to Requests for Payment.
- 3.1 No Grant Award funds will be issued without a Request for Payment.
  - 3.2 The Grant Award is exclusive funding and will be used only for the Project. The Grant Recipient shall not apply funds authorized by the Commission Order to activities authorized under other grant awards or other grant proceedings unless authorized to do so by the Commission in Attachment B – Project Scope.
  - 3.3 The Grant Recipient shall prepare and submit to the Commission one or more Requests for Payment using the Commission’s Payment Request Form, a sample template of which is attached as Attachment E. Updated templates may be issued in the future. In the event that a new template is issued, Grant Recipients will be notified of the change.

- 3.4 Upon satisfaction by the Grant Recipient of the requirements of the Commission Order and this Agreement, the Commission will disburse funds to the Grant Recipient for Eligible Costs in a total amount not to exceed the Total Award.
- 3.5 Only Eligible Costs may be reimbursed. A Grant Recipient may request from the Commission (1) an amendment to Attachment C – Project Budget to add to or revise the list of expenses eligible for reimbursement, or (2) an amendment to Attachment B- Project Scope. Amendments shall be requested pursuant to Section 25.0 of these Terms and Conditions.
- 3.6 With each Request for Payment, the Grant Recipient shall include a copy of an invoice (or receipt) for each Eligible Cost item for which reimbursement is requested.
- 3.6.1 The invoice will be used to document the actual purchase price of the Eligible Cost item. A Request for Payment shall be accompanied by written support of Eligible Costs, including internal accounting records or contracts, as appropriate or when requested by the Commission. A Request for Payment shall provide an independent and auditable basis for the actual purchase price of each Eligible Cost item.
- 3.6.2 For Eligible Cost items that do not have a transaction invoice, such as employee labor expenses, the Grant Recipient shall provide documentation showing the total hours contributed by employee class (e.g. engineer, construction worker, instructor, IT support, or assistive technology expert) that worked on the Project, the date(s) that the work was done, and the total labor expense reported. Upon the request of the Commission, the Grant Recipient shall also provide a list of actual hours worked and the specific wage for each employee that worked on the Project, and any payroll documentation or other similar evidence that the Commission might request.
- 3.6.3 For Eligible Cost items that do not have a transaction invoice or record and do not fall under the labor expenses addressed in Section 3.7.2, above, the Grant Recipient shall, with prior authorization from the Commission, in lieu of an invoice, submit a narrative description of the Eligible Cost along with any relevant documentation.
- 3.6.4 The Commission may delay reimbursement of a Request for Payment until sufficient documentation of costs and project status, as determined by the Commission, is provided by the Grant Recipient.
- 3.6.5 The Grant Recipient shall submit a final Request for Payment to the Commission within 30 days of completion of Performance Period.
- 3.7 The reimbursement to the Grant Recipient will not exceed the Total Award unless expressly approved by the Commission in an Amendment, which can be requested pursuant to Section 25.0 of these Terms and Conditions.
- 3.7.1 The reimbursement to the Grant Recipient will not exceed 80 percent of the amount of the Total Award prior to the submittal of the required reports and information to the Commission.
- 3.8 Grant Recipient is responsible for reimbursement to the Commission for any disbursed Grant Award funds that are determined by the Commission to have been ineligible, misused or misappropriated, or not incurred during the performance period. If the Commission determines that any provision of the Grant Award, including the Grant Agreement and Commission Order. Any reimbursement of funds that is required by the Commission, with or without termination of this Agreement, will be due within 45 days after giving written notice to the Grant Recipient. The Commission also reserves the

right to recover such funds by any other legal means, including litigation. The Grant Recipient shall indemnify and hold harmless the Commission for all suits, actions, claims and the reasonable attorneys' fees and legal expenses incurred in recovering such funds, irrespective of whether the funds are recovered.

Grant Recipient shall promptly refer to the Commission any credible evidence that a Grant Recipient Contractor or Grant Recipient Personnel, or other person has either: 1) submitted a false claim for grant funds as that term is used under any false claims act or other similar law, whether state or federal; or 2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving grant funds.

#### 4.0 **Inspection and Audit Rights of the Commission.**

- 4.1 Notwithstanding anything in this Agreement to the contrary, the Commission may limit or condition Eligible Costs upon satisfaction by the Grant Recipient of conditions necessary to maintain the tax exempt status of any bonds issued by the State to finance the Project.
- 4.2 The Commission shall have the right to enter upon the Project site at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Agreement, provided that (except in cases where Commission reasonably determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Agreement that would significantly impair the public purposes to be served by this Agreement) such entry shall be upon prior reasonable notice in writing to the Grant Recipient.
- 4.3 The Commission shall have the right to prevent any activity on or use of the Broadband Facility that is inconsistent with the purpose and terms of this Agreement.
- 4.4 All governmental and non-profit Grant Recipients (non-federal entity) that are required to comply with the Single Audit Act Amendments of 1996, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and the State Single Audit Guidelines issued by the Department of Administration, shall ensure that funds awarded by the Commission Order are included in the audit report. A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions 2 CFR Parts 200.500 through 200.521. A non-federal entity shall submit audit reports to the Commission within 180 days of the close of the entity's fiscal year, unless waived by the Commission.
- 4.5 All other Grant Recipients shall submit an audit of the Grant Award in accordance with the Wisconsin State Single Audit Guideline requirements upon request from the Commission.
- 4.6 Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, post-award audits, and any other methods deemed necessary by the Commission.
- 4.7 Grant Recipient shall submit an agreed upon procedures audit upon request from the Commission. This audit will consist of procedures and questions requested by the Commission and may expand beyond the scope of that provided for under the Wisconsin State Single Audit Guideline requirements.
- 4.8 Submit one copy of the audit to email address listed below. Additionally, Grant Recipient shall submit responses and corrective actions to be taken by management regarding any findings or comments issued by the auditor. If the Grant Recipient has had an audit at any point outside of the Commission Grant Award, the Grant Recipient shall

share the results of that audit with the Commission to the email address listed below, along with any corrective actions to be taken, and any findings or comments issued by the auditor.

- 4.9 Submit one copy of the audit or letter confirming that the audit requirements are not applicable via email to [pscbroadbandgrantreimbursement@wisconsin.gov](mailto:pscbroadbandgrantreimbursement@wisconsin.gov).

5.0 **Recordkeeping, Examination of Records and Facilities.** The Commission will have access to and the right at any time during normal business hours to examine, audit, excerpt, transcribe, and copy on Grant Recipient's premises any records and files of Grant Recipient involving transactions relating to a Grant Award, including any agreements or MOUs with any partners or Grant Recipient Contractors related to the project or fiscal management of the award. The Commission or a contractor of the Commission will have access at any time to examine, audit, test and analyze any and all items purchased or constructed in whole or in part using funds provided by the Commission as part of a Grant Award, including inspection by a Professional Engineer.

- 5.1 If any of the above records and files are held in an automated format, the Grant Recipient shall provide copies of these records and files in the automated format or such computer file as may be requested by the Commission.
- 5.2 Grant Recipient shall retain such records and files for at least five years following final payment of the Grant Award, unless the Commission instructs the Grant Recipient to retain the records for the Bond Term or a longer period.
- 5.3 Grant Recipient is responsible for any charges for copies provided by the Grant Recipient to the Commission of books, documents, papers, records, computer files or computer printouts.
- 5.4 The minimum acceptable financial records for a Grant Award consist of:
- 5.4.1 Documentation of employee time and compensation;
  - 5.4.2 Documentation of all equipment, materials, contracted labor, supplies and travel expenses, including purchasing (procurement) records and procedures;
  - 5.4.3 Inventory records and supporting documentation for allowable equipment purchased to carry out the project scope;
  - 5.4.4 Documentation and justification of methodology used in any in-kind contributions;
  - 5.4.5 Rationale supporting allocation of space charges;
  - 5.4.6 Documentation of agreement services and materials; and
  - 5.4.7 Any other records that support charges to a Grant Award.
- 5.5 The Grant Recipient shall maintain reasonably prudent, as determined by the Commission, segregation of Project accounting records from accounting records relating to other projects or programs.

6.0 **Compliance with Law; Compliance with CERCLA.** The Grant Recipient and its agents and representatives shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations that in any manner affect or apply to the project. The Grant Recipient shall be bound by all Commission orders that in any manner affect the Grant Award. Nothing in this Agreement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability of the Commission to exercise physical or managerial control over the day-to-day operations of the Project, or otherwise to become an operator with respect to the Project within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), or similar laws imposing legal liability on the owner or operator of real property.

- 7.0 **Extinguishment.** If circumstances arise in the future that render the purpose of this Agreement impossible to accomplish, then this Agreement can be terminated or extinguished, whether in whole or in part, only by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the original amount of the Grant.
- 8.0 **Condemnation.** If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in-lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Agreement, in whole or in part, then Grantor and Grantee shall act jointly to recover the full value of Grantor's interest in the Property subject to the taking or in-lieu purchase and all direct or incidental damages resulting therefrom (the "**Award**"), from which Award Grantee shall be entitled to collect an amount equal to the original amount of the Grant, plus reasonable interest calculated from the date hereof, and any expenses reasonably incurred by Grantee in connection with the taking or in-lieu purchase; provided, however, that if the Award is less than such original Grant amount plus such reasonable interest, then Grantee shall be entitled to recover its pro rata share of the Award.
- 9.0 **Subsequent Transfers.** Grantor agrees to incorporate the terms of this Agreement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any such interest at least 30 days prior to the date of such transfer. The failure of Grantor to perform any act required by this Paragraph 9 shall not impair the validity of this Agreement or limit its enforceability in any way.
- 10.0 **Estoppel Certificates.** Grantee shall within 30 days after its receipt of a written request by Grantor therefor, execute and deliver to Grantor, or to any party designated by Grantor, an estoppel certificate, which certifies Grantor's compliance with any obligations of Grantor contained in this Agreement. Such certification shall be limited to the use being made of the Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within 20 days after its receipt of Grantor's written request therefor and shall execute and deliver the requested certificate within 10 days after such inspection.
- 11.0 **Required Attestation.** The following requirements below shall apply to Grant Recipient, including all Grant Recipient Contractors and Grant Recipient Personnel. Grant Recipient shall require and cause any Grant Recipient Contractor and Grant Recipient Personnel used by Grant Recipient in the performance of the Agreement to certify, agree to, and be subject to and bound by each of the following requirements listed below. Within 15 working days after this Agreement is executed, Grant Recipient shall submit an attestation to the Commission, attesting compliance with Sections 7.1, 7.2, and 7.3 of the Agreement, in the format specified by the Commission. No extensions of this deadline will be granted.
- 11.1 **One-Call and Diggers Hotline.** Grant Recipient and its Grant Recipient Contractors and Grant Recipient Personnel agree to comply with Wisconsin's one-call requirements under Wis. Stat. § 182.0175 in performing the grant project, which include, but not limited to, providing advance notice of at least three business days to the one-call system prior to nonemergency excavation.
- 11.2 **Authorization to Transact Business.** Grant Recipient attests that it and its Grant Recipient Contractors and if applicable, Grant Recipient Personnel, are authorized or registered to transact business in this state by the Department of Financial Institutions in compliance with Wis. Stat. chs. 178, 179, 180, 181, 183, 185, and any other applicable Wisconsin laws related to the authorization to transact business in Wisconsin.
- 11.3 **OSHA (Occupational Safety and Health Administration).** Grant Recipient and its agents and representatives, including all Grant Recipient Contractors and Grant Recipient Personnel, agree to comply with all safety requirements under Wisconsin law and all applicable OSHA standards.



- 12.0 **Insurance Requirements.** Grant Recipient shall provide and maintain in full force and effect at no cost to the Commission the following insurance coverage with limits as indicated, which may be revised by the Commission if required by state or federal law, at all times during the Term of Agreement. The certificate of insurance will be required upon request.
- 12.1 Grant Recipient shall maintain Worker's Compensation as required by Wisconsin Statutes, for all employees engaged in work.
  - 12.2 Grant Recipient shall maintain commercial liability, bodily injury and property damage insurance against all claim(s) which might occur in carrying out this Agreement. Minimum coverage shall be \$1,000,000 liability for bodily injury and property damage including products liability and completed operations.
  - 12.3 Grant Recipient shall maintain motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out this Agreement. Minimum coverage shall be \$1,000,000 per occurrence combined single limit for automobile liability and property damage.
- 13.0 **Indemnification.** Grant Recipient assumes all liability for any and all injuries, damages, or claims in any way associated with the Grant Award and the Project. The Grant Recipient shall indemnify and hold harmless the Commission and all of its officers, agents, and employees from all suits, actions or claims of any character brought for or on account of any injuries or damages received by any persons or property resulting from or in any way associated with the Grant Award and the Project, including reasonable attorneys' fees and costs for enforcement. Grant Recipient shall indemnify and hold harmless the Commission and all of its officers, agents and employees from all suits, actions or claims of any character brought for or on account of any obligations arising out of agreements between itself and Grant Recipient Contractors and Grant Recipient Personnel to perform services or otherwise supply products or services.
- Grant Recipient shall also hold the Commission harmless for any audit disallowance related to the allocation of administrative costs under this Agreement, irrespective of whether the audit is ordered by federal or state agencies or by the courts. If an audit is required by federal law and if Grant Recipient is also the recipient of Commission funds under the same or a separate contract program, then the Commission-funded programs shall also be included in the scope of the federally required audit.
- 14.0 **Captions.** The captions in this Agreement have been inserted solely for convenience of reference and shall have no effect upon its construction or interpretation.
- 15.0 **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Agreement shall be liberally construed to effect the primary purpose of this Agreement and the public purposes to be served by the making of the Grant. If any provision in this Agreement is found to be ambiguous, then an interpretation consistent with the primary purpose of this Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 16.0 **Severability.** If any provision of this Agreement, or the application thereof to any person or circumstance, is found to be invalid, then the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- 17.0 **Entire Agreement.** This Agreement sets forth the entire agreement of the parties with respect to this Agreement and supersedes all prior discussions, negotiations, understandings, or agreements relating to such matters, all of which are merged herein.
- 18.0 **Sovereign Immunity.** The Commission does not waive any immunity defenses (including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of

the United States, or otherwise) or any other defenses available to either by entering into this Agreement, and specifically retains and reserves all immunity defenses.

- 19.0 **Attorney's Fees and Expenses.** In the event Grant Recipient defaults on any of its obligations under this Agreement, Grant Recipient shall pay to the Commission all costs and expenses (including the reasonable value of time of Commission attorneys, the Attorney General's Office, and the costs, expenses and attorney fees of other counsel retained by or on behalf of the Commission) incurred by the Commission in enforcing this Agreement or any of its rights and remedies with respect thereto.
- 20.0 **Disclosure.** If a state public official (Wis. Stat. § 19.42), a member of a state public official's immediate family, or any organization in which a state public official or member of the official's immediate family owns or controls a ten percent interest, is a party to this Agreement, and if this Agreement involves payment of more than \$3,000 within a 12 month period, this contract is voidable by the state unless appropriate disclosure is made according to Wis. Stat. § 19.45(6), before signing this Agreement. Disclosure shall be made to the State of Wisconsin Ethics Board, 44 East Mifflin Street, Suite 601, Madison, Wisconsin 53703 (Telephone 608-266-8123).
- 21.0 **Vendor Tax Delinquency.** Grant Recipients that have delinquent Wisconsin tax liability may have their payments offset by the State of Wisconsin.
- 22.0 **Conflicts of Interest.** Private and non-profit corporations are bound by Wis. Stat. §§ 180.0831, 180.1911(1), and 181.0831, regarding conflicts of interest by directors in the conduct of state contracts.
- 23.0 **Suspension.** For cause, and upon notice to the Grant Recipient, the Commission may suspend reimbursements. Any costs directly attributable to activities incurred upon such notice will cease to be Eligible Costs unless otherwise authorized by the Commission.
- 24.0 **Waiver.** Failure or delay on the part of the Commission to exercise any power under the Commission Order or this Agreement will not constitute a waiver thereof.
- 25.0 **Amendment.** This Agreement may be amended at any time by written mutual consent of the Parties. Amendments shall be documented in writing, dated, and signed by the Parties.
- 25.1 The Grant Recipient shall notify the Commission of any proposed significant changes in Attachment B – Project Scope or Attachment C – Project Budget as soon as practicable and may only make such significant changes if the Commission signs an amendment authorizing and memorializing such significant change. Significant changes include:
- a) Any change in the list of expenses, contributions or in-kind, as described in Attachment C – Project Budget.
  - b) Any change in the Project or activities, as described in Attachment B – Project Scope.
  - c) Any transfer of funds among cost categories that exceed or are expected to exceed twenty (20) percent of the approved total project Budget.
  - d) Any significant changes to the anticipated project timeline.
  - e) Any requests to extend the performance period.
- 25.2 The Commission reserves the right to amend the Agreement, pursuant to changes in applicable federal or state laws.
- 26.0 **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Wisconsin and the United States. Any legal action regarding this Agreement, as amended, or its provisions shall be subject to Wisconsin Statute Chapter 227. Any Chapter 227 proceeding or dispute or controversy arising under this Agreement shall be brought in a court of competent jurisdiction in Dane County,

Wisconsin Circuit Court or the Federal District Court for the Western District of Wisconsin. The Parties consent to the jurisdiction of such court and waive any objections to such jurisdiction.

- 27.0 **Assignment and Delegation.** Grant Recipient may not assign, transfer, or convey without the prior written consent of the Commission, this Agreement or the rights to any funds hereunder. For purposes of construing this clause, a transfer of a controlling interest in Grant Recipient; a merger, sale or consolidation of Grant Recipient; or a sale of substantially all of Grant Recipient's assets shall be considered an assignment. Grant Recipient agrees that it shall request written consent from the Commission with the earliest possible advance notice of any such assignment. Grant Recipient agrees that it shall not assign, sell, pledge as collateral, create a lien, or otherwise transfer the Project, this Agreement, or its rights hereunder without prior written consent of the Commission.
- 28.0 **Independent Contractor.** Grant Recipient, including its Grant Recipient Contractors and Grant Recipient Personnel, shall not hold themselves out as an employee or agent of the Commission or State of Wisconsin. Grant Recipient, including Grant Recipient Personnel, are not considered employees of the Commission or State of Wisconsin for any purpose, including federal or state tax purposes.
- 29.0 **Obligations of Joint Entities.** If Grant Recipient is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Agreement, and for any default with respect to such activities and obligations.
- 30.0 **Non-Discrimination and Affirmative Action Requirements.** Grant Recipient and its Grant Recipient Contractors and Grant Recipient Personnel shall not discriminate in employment and hereby certify that it will not discriminate against any employee or applicant for employment on the basis of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Wis. Stat. § 51.01(05), sexual orientation as defined in Wis. Stat. § 111.32(13m), or national origin. This includes, but is not limited to, employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Grant Recipient shall state in all solicitations or advertisements for employees placed by it or on its behalf that all qualified applicants shall receive consideration for employment without regard to age, race, religion, color, handicap, sex, or physical condition, developmental disability as defined in Wis. Stat. § 51.05(5), sexual orientation as defined in Wis. Stat. § 111.32(13m), or national origin. Grant Recipient and its Grant Recipient Contractors and Grant Recipient Personnel shall comply with applicable federal, State, and local laws regarding discrimination and equal opportunity in employment, including but not limited to: (a) Title VI and VII of the Civil Rights Act of 1964, as amended; and (b) The Americans with Disabilities Act of 1990, as amended.

Except with respect to sexual orientation, Grant Recipient shall take affirmative action to ensure equal employment opportunities. Grant Recipient shall post in conspicuous places, available for employees and applicants for employment, notices required by law setting forth the provisions of the nondiscrimination clause.

Grant Recipient shall make every reasonable effort to develop a balance in either its total workforce or in the project-related workforce that is based on a ratio of work hours performed by handicapped persons, minorities, and women. The balance in workforce shall be at least proportional to the percentage of minorities and women present in the relevant labor markets based on data prepared by the department of industry, labor, and human relations, the office of federal contract compliance programs and by another appropriate governmental entity. In the absence of any reliable data, the percentage for qualified handicapped persons shall be at least 2 percent for whom Grant Recipient shall make a reasonable accommodation.

Contracts estimated to be over \$50,000 require the submission of a written affirmative action plan by Grant Recipient. An exemption occurs from this requirement if Grant Recipient has a workforce of less

than 50. Within 15 working days after this Agreement is executed, the Grant Recipient shall submit the Affirmative Action Plan/exemption statement to the Commission, unless compliance eligibility is current as determined by the Commission. No extensions of this deadline will be granted. The Grant Recipient shall also submit a written affirmative action plan or exemption statement for each Grant Recipient Contractor.

Failure to comply with the conditions in this clause may result in the declaration of Grant Recipient ineligibility, the termination of this Agreement, or the withholding of funds.

- 31.0 **Change in Funding/Right to Review and Amend.** Grant Recipient shall notify the Commission within 10 days of any change in project funding from local, state, tribal, or federal sources that would overlap with the approved project areas or materially change the scope of the project that the Commission has approved. The Commission reserves the right to review, amend, or terminate the Agreement should any change in funding occur.

- 32.0 **Publicity.** When issuing statements, press releases, or any marketing or promotional materials describing the Project, Grant Recipient shall ensure that the materials or communications include this statement:

“This project [is being] [was] supported, in whole or in part, through \$[grant award amount] of funds from the State of Wisconsin, acting by and through the Public Service Commission of Wisconsin.”

In addition, during the Term and at all times after the termination or expiration of this Agreement, Grant Recipient shall not make any media release or other public announcement related to the Project without prior written notification and opportunity for participation/involvement to the Commission. Except as otherwise required herein, Grant Recipient shall acquire no right to use, and shall not use, without the Commission’s or the State of Wisconsin’s prior written consent, the terms or existence of this Agreement, the names, trade names, trademarks, service marks, artwork, designs, or copyrighted materials of the Commission or the State of Wisconsin, its related entities, employees, assigns, successors or licensees: (a) in any advertising, publicity, press release, customer list, presentation or promotion; or (b) to express or imply any endorsement of the Project(s).

- 33.0 **Successors.** The covenants, terms, conditions, and restrictions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in with the Property during the Term.
- 34.0 **Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either delivered personally or sent by first class mail, postage prepaid, addressed as follows:

If to Grant Recipient: [ADD]

If to the Commission: [ADD]

- 35.0 **Termination and Cancellation.** Grant Recipient understands and agrees that the Commission may at a

later time determine that Grant Recipient is not in compliance with the Commission Order or the terms of this Agreement. In such case, the Commission may terminate the Grant Award. Upon termination, Grant Recipient shall return all Grant Award funds previously disbursed (regardless of whether spent) within 30 days of the written notice of termination, and the Commission shall exercise its remedies described in Section 7 of Attachment A. If Grant Recipient wishes to cancel the Project, Grant Recipient may submit a written request to the Commission requesting that the Commission approve the termination of the Grant Award. If the Commission grants the request, Grant Recipient shall return all Grant Award funds previously disbursed within 30 calendar days of the Commission's approval of the termination.

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## REPORTING REQUIREMENTS

- 37.0 **Project Status Reports.** Grant Recipient shall submit Project Status Reports to the Commission as provided below.
- 37.1 **Format.** Periodic Project Status reports are required. The types of information required are listed on Attachment D – Reporting Requirements to this Agreement. Report templates will be issued in the future. In the event that a new template is issued, Grant Recipients will be notified of the change, and the new sample form template will be made available to Grant Recipients. Grant Recipient shall provide a response to each question that is applicable to the type of report being filed and the Project.
- 37.2 **Schedule.** Project Status Reports are due as follows:
- 37.2.1 Interim Project Status Reports shall be prepared and submitted on a schedule determined by the Commission.
- 37.2.2 A Final Project Status Report is due at the same time that a Grant Recipient submits a final Request for Payment. The final Request for Payment and the final Project Status Report are due no later than 30 days after the end of the performance period.
- 37.2.3 Post Project Status Reports are due annually during December of the calendar year following Grant Recipient's filing of the final Project Status Report. Grant Recipient shall file for two years, i.e., two annual Post Project Status Reports.
- 37.3 **Filing Procedure.** All Project Status Reports shall be submitted to the Commission in the manner and format specified by the Commission.
- 37.4 **Failure to File or Timely File.** Failure to file or timely file reports may result in claw back of funds up to the Total Award.

## ATTACHMENT A –SECURITY INTEREST PROVISIONS

1. **Overview.** This Attachment A sets forth additional requirements applicable, without limitation, to a grant of funds under Wis. Stat. §§ 13.48 (30) and 196.504 (2)(a) and the Agreement. The Grant Recipient agrees to comply with all applicable statutes, administrative rules, and requirements applicable to this grant award not described in Attachment A. The Commission reserves the right to amend Attachment A at any time by written mutual consent of the Parties as described in Section 17 of the Terms and Conditions Applicable to Grant Awards. Capitalized terms not defined herein shall have the meanings provided in the Agreement and the Applicable Law.
2. **Grant of Security Interest.**
  - 2.1. To secure the performance of the Secured Obligations, the Grant Recipient hereby grants to the Commission or another state entity designated by the Commission (collectively the “**State Agency**”) a security interest in the Pledged Collateral as defined in Attachment H hereto.
  - 2.2. Grant Recipient shall not permit to become effective, in any lease, license, contract or any other agreement, a provision that would prohibit, or require the consent of any Person to, the grant in favor of the State Agency of a lien on such lease, license, contract or other agreement, including federal Department of Agriculture Rural Utilities Service liens.
3. **Perfection of Security Interest and Further Assurances.**
  - 3.1. The Grant Recipient hereby irrevocably authorizes the State Agency at any time and from time to time to file in any relevant jurisdiction any financing statements (including fixture filings) and amendments thereto that contain the information required by Article 9 of the UCC of each applicable jurisdiction for the filing of any financing statement or amendment relating to the Pledged Collateral, including (i) whether the Grant Recipient is an organization, the type of organization and, if required, any organizational identification number issued to the Grant Recipient, and (ii) in the case of a financing statement filed as a fixture filing, a sufficient description of the real property to which such Pledged Collateral relates. The Grant Recipient agrees to provide all information described in the immediately preceding sentence to the State Agency promptly upon request by the State Agency.
  - 3.2. **[Include only if there are Motor Vehicles acquired by the Grant]** [Motor Vehicles. With respect to each Motor Vehicle [owned by the Grant Recipient on the closing date or] in which ownership is acquired by the Grant Recipient after the date hereof, such Grant Recipient shall deliver to the State Agency [on the closing date or] [as soon as practicable/within 30 days] after the date of such acquisition[, as the case may be], originals of the certificates of title or ownership for all Motor Vehicles owned by it with the State Agency listed as lienholder therein.]
  - 3.3. The Grant Recipient shall take such further actions, and execute and/or deliver to the State Agency such additional financing statements, amendments, assignments, agreements, supplements, powers and instruments, as the State Agency may in their reasonable judgment deem necessary or appropriate in order to create and/or maintain the validity, perfection or priority of any security interest granted or purported to be granted in the Pledged Collateral as provided herein and the rights and interests granted hereunder, and enable the State Agency to exercise and enforce their rights, powers and remedies hereunder with respect to any Pledged Collateral, including the filing of any financing statements, continuation statements and other documents under the UCC (or other similar laws) in effect in any jurisdiction with respect to the security interest created hereby, and in such offices wherever required by law to perfect, continue and maintain the validity, enforceability and priority of the security interest in the Pledged Collateral as provided herein and to preserve the other rights and interests granted hereunder, as against third parties, with respect to the Pledged Collateral. All of the foregoing shall be at the sole cost and expense of the Grant Recipient. Without limiting the generality of the foregoing, but subject to applicable law, the Grant

Recipient shall make, execute, endorse, acknowledge, file or refile and/or deliver to the State Agency from time to time upon reasonable request by the State Agency such lists, schedules, descriptions and designations of the Pledged Collateral as the State Agency shall reasonably request.

4. **Use Restriction Agreement.** Concurrently with the delivery of this Agreement, the Grant Recipient shall execute and deliver to the State Agency a Use Restriction Agreement in the form attached hereto as Attachment J.
5. **Grant Recipient Covenants.**
  - 5.1. **Performance.** Grant Recipient covenants and agrees that the Broadband Facility shall operate in a manner consistent with its Project Scope.
  - 5.2. **Maintenance of Collateral.** The Grant Recipient shall maintain the Pledged Collateral in good condition and repair and not permit its value to be impaired; keep it free from all liens, encumbrances and security interests (other than the State Agency's security interest) and [Insert any permitted subordinate liens]; defend it against all claims and legal proceedings by persons other than the State Agency; pay and discharge when due all taxes, license fees, levies and other charges upon it; not sell, lease, license or otherwise transfer or dispose of it [or permit it to become a fixture or an accession to other goods], except for sales, leases or licenses of inventory as provided in this Agreement; and not permit it to be used in violation of any applicable law, regulation or policy of insurance. Loss of or damage to the Pledged Collateral shall not affect the liabilities of the Grant Recipient, the Obligations or the other rights of the State Agency with respect to the Pledged Collateral under this Agreement.
  - 5.3. **Compliance with Governmental Purpose Certification.** Grant Recipient covenants and agrees, at least annually, and within ten (10) days after written request by the State Agency for such certificate, timely provide a certified written statement (the "Compliance Certificate") in the form attached hereto as Attachment G, duly executed, acknowledged, and delivered, for the benefit of State Agency. Such Compliance Certificate shall certify the accuracy and correctness of the following statements (or, if any such statement shall not be correct on the date of certification, shall state with particularity the detail in which incorrect): (i) that — except by reason of a change in applicable laws and regulations — all representations and warranties in this Agreement are fully true and correct as of the date of the Compliance Certificate; and (ii) that — except by reason of a change in applicable laws and regulations — Grant Recipient is, on the date of the Compliance Certificate, fully in compliance with all covenants under the Agreement. Grant Recipient and State Agency intend that any Compliance Certificate delivered pursuant to this section may be relied on by the State Agency. If Grant Recipient does not deliver the Compliance Certificate as directed within the required ten (10) day period, or if any statement so delivered by Grant Recipient shall be inaccurate in any material respect, then Grant Recipient shall be in default of this Agreement and shall immediately be subject to any or all of the remedies provided under this Agreement.
6. **Grant Recipient's Representations and Warranties.** Grant Recipient represents and warrants that:
  - 6.1. on behalf of itself and its successors and assigns, that the Project will be primarily used to provide [add description] and that the Grant Recipient shall not cause or permit any activity on or use of the Broadband Facility materially inconsistent with such primary use.
  - 6.2. to the best knowledge of Grant Recipient, there is no pending or threatened litigation in any way affecting, involving, or relating to the Grant Recipient Parcel and no civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Grant Recipient Parcel or its use, nor do there exist any facts



- or circumstances that Grant Recipient believes would form the basis for any such proceedings, investigations, notices, claims, demands, or orders.
- 6.3. the Grant Recipient has acquired or will acquire (and shall maintain such) all the necessary easements, licenses, or other rights of way to access the property to install and maintain the Broadband Facility.
  - 6.4. the execution delivery and performance of this Agreement and any instruments evidencing the Secured Obligations will not violate or constitute a breach of the Grant Recipient's organizational documents.
  - 6.5. all information, certificates or statements given to State Agency pursuant to this Agreement shall be true and complete when given.
  - 6.6. Grant Recipient's exact legal name is as set forth in Section \_\_\_\_ [Notices].
  - 6.7. if Grant Recipient is an organization that has only one place of business, the address of Grant Recipient's place of business, or if Grant Recipient has more than one place of business, then the address of the Grant Recipient's chief executive office, is as set forth in Section \_\_\_\_ [Notices].
  - 6.8. the address where the Pledged Collateral will be kept, if different from at the Broadband Facility site, is [Insert Location]. Such location shall not be changed without prior written consent of the State Agency, but the parties intend that the Pledged Collateral, wherever located, is covered by this Agreement.
  - 6.9. there are no unpaid wages due employees of the Grant Recipient and there are no outstanding liens against assets of the Grant Recipient for unpaid wages due employees of Grant Recipient.
  - 6.10. if any of the Pledged Collateral is affixed to real estate, the legal description of the real estate set forth in each UCC Financing Statement authorized by Grant Recipient under this Agreement is true and correct. A true, accurate, and complete legal description of the real estate onto which Pledged Property is affixed is listed on Attachment H hereto.

## **7. The State Agency's Remedies.**

- 7.1. If the State Agency determines that a violation of the Grant Recipient's covenants or other terms of this Agreement has occurred or is threatened by the Grant Recipient, then it shall give written notice to Grant Recipient of the same, and Grant Recipient shall have a [thirty (30) day] period after the receipt of such notice in which to cure such violation. If Grant Recipient fails to cure such a violation within [30 business days] after receipt of notice to do so from State Agency, then Grant Recipient, within [10 business days] after the expiration of the cure period, shall deliver to State Agency [(i)] any Grant funds disbursed to it but not yet spend, [(ii)] a Bill of Sale, transferring to the State Agency the Pro Rata Ownership Interest in the Broadband Facility and in any additional Grant-funded personal property [, and (ii) a deed, as further provided in the Use Restriction Agreement, transferring to the State Agency a Pro Rata Ownership Interest as well as access, support, and other rights in such real property] .
- 7.2. The State Agency may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Agreement, to enjoin the violation, by temporary or permanent injunction, and to require the restoration of the Broadband Facility to the condition that existed prior to such violation.
- 7.3. The State Agency's rights under this Agreement apply equally in the event of either actual or threatened violations of the terms of this Agreement. Grant Recipient agrees that the State Agency shall be entitled to the injunctive relief described in Section [\_\_] hereof, both prohibitive and mandatory, in addition to such other relief to which the State Agency may be entitled, including specific performance of the terms of this Agreement. The remedies described in this Section [5.3] shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- 7.4. If an Event of Default has occurred and is continuing, the State Agency may institute and maintain, in its own name or in the name of Grant Recipient, such suits and proceedings as

the State Agency may [deem/be advised by counsel to be] necessary or expedient to prevent any impairment of the security interest in or the perfection thereof in the Pledged Collateral.

8. **Costs of Enforcement.** All reasonable costs incurred by the State Agency in successfully enforcing the terms of this Agreement against Grant Recipient, including, without limitation, costs and expenses of suit and reasonable attorney's fees, shall be borne by Grant Recipient.
9. **Forbearance.** Forbearance by the State Agency in exercising its rights under this Agreement in the event of any breach of any term of this Agreement by Grant Recipient shall not be deemed or construed to be a waiver by the State Agency of such breach or of any subsequent breach of the same or any other term of this Agreement or of any of the State Agency's rights under this Agreement. No delay or omission in the exercise by the State Agency of any right or remedy upon any breach by Grant Recipient shall impair such right or remedy or be construed as a waiver.
10. **Waiver of Certain Defenses.** Grant Recipient hereby waives any defense of laches, estoppel, or prescription.
11. **Acts Beyond Grant Recipient's Control.** Notwithstanding anything to the contrary contained in this Agreement, the State Agency shall not be entitled to bring any action against Grant Recipient for any change in use of the Broadband Facility resulting from causes beyond Grant Recipient's reasonable control, including, without limitation, fire, flood, storm, and earth movement; or from any action or inaction by Grant Recipient required by local, state, or federal laws or regulations.
12. **Taxes.** Grant Recipient shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Grant Recipient or the Project by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of this Agreement, and shall furnish the State Agency with satisfactory evidence of payment upon request.
13. **Permits and Licenses.** The Grant Recipient remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Agreement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. The Grant Recipient shall maintain all the necessary easements, licenses, or other rights of way to access the property to install the Broadband Facility.
14. **No Public Access.** No right of access by the general public to any portion of the Broadband Facility is granted by this Agreement.

## ATTACHMENT B – PROJECT SCOPE

**Summary:** (To be added)

Preliminary DRAFT

## **ATTACHMENT C – PROJECT BUDGET**

(To be added)

Preliminary DRAFT

## **ATTACHMENT D – REPORTING REQUIREMENTS**

Project and Expenditure Reports are required periodically. The types of data required will be:

Sample Interim Report can be found here:

[https://psc.wi.gov/Documents/broadband/Interim\\_Project%20Status%20Report%20FY2020.docx](https://psc.wi.gov/Documents/broadband/Interim_Project%20Status%20Report%20FY2020.docx)

Sample Final Report can be found here:

<https://psc.wi.gov/Documents/broadband/Project%20Status%20Report%20-%20Final.pdf>

Preliminary DRAFT

## **ATTACHMENT E – PAYMENT REQUEST FORM – SAMPLE**

(To be added)

## **ATTACHMENT F – COMMISSION ORDER**

(To be added)

## **ATTACHMENT G – COMPLIANCE CERTIFICATION FORM**

(To be added)



## ATTACHMENT H – PLEDGED COLLATERAL

*[This attachment is intended to identify personal property of the Grant Recipient that is subject to the grant of security interest under Attachment A hereof]*

**Pledged Collateral** means the following: *[to be amended to describe the category of assets acquired by the Grant. Below are examples of categories to likely be covered.]*

- (A) **ALL EQUIPMENT, GOODS, INVENTORY, AND FIXTURES USED IN CONNECTION WITH THE BROADBAND FACILITY;**
- (B) **ALL BOOKS AND RECORDS PERTAINING TO THE BROADBAND FACILITY (INCLUDING CUSTOMER LISTS, CREDIT FILES, COMPUTER FILES, PROGRAMS, PRINTOUTS AND OTHER COMPUTER MATERIALS AND RECORDS RELATING TO THE PLEDGED COLLATERAL) AND ANY GENERAL INTANGIBLES AT ANY TIME EVIDENCING OR RELATING TO ANY OF THE FOREGOING;**
- (C) **[MOTOR VEHICLES WITH THE FOLLOWING VIN NUMBERS #]; AND**
- (D) **[OTHER ITEMS ACQUIRED BY THE GRANT OR REQUIRED TO OPERATE THE BROADBAND FACILITY].**

**UCC** means the Uniform Commercial Code as currently in effect in the State. Capitalized terms used in this Attachment H or otherwise in the Agreement and not otherwise defined shall have the meanings given thereto in the UCC.

*[If any of the Collateral is affixed to real estate, the Grant Recipient shall provide below true and correct legal description of the real estate onto which the Pledged Collateral is affixed:  
Legal Description of Real Property]*

## ATTACHMENT I – FORM OF BILL OF SALE

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, [GRANT RECIPIENT], a[n] [STATE OF ORGANIZATION] [TYPE OF ENTITY] (“**Seller**”), does hereby grant, bargain, transfer, sell, assign, convey and deliver to the Public Service Commission of Wisconsin (the “**Commission**”) or another state entity designated by the Commission (collectively the “**State Agency**”), representing the State of Wisconsin (“**Buyer**”), a Pro Rata Ownership Interest in and to the [Pledged Collateral], as such term is defined in [Attachment H] to the [GRANT AND SECURITY AGREEMENT], dated as of [DATE] (the “**Agreement**”), by and between Seller and the State Agency, to have and to hold the same unto Buyer, its successors and assigns, forever.

Buyer acknowledges that Seller makes no representation or warranty with respect to the assets being conveyed hereby except as specifically set forth in the Agreement.

Seller for itself, its successors and assigns, hereby covenants and agrees that, at any time and from time to time upon the written request of Buyer, Seller will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney, and assurances as may be reasonably required by Buyer in order to assign, transfer, set over, convey, assure, and confirm unto and vest in Buyer, its successors and assigns, title to the assets sold, conveyed, and transferred by this Bill of Sale.

IN WITNESS WHEREOF, Seller has duly executed this Bill of Sale as of [DATE].

[GRANT RECIPIENT]

By\_\_\_\_\_

Name:

Title:

## ATTACHMENT J – FORM OF USE RESTRICTION AGREEMENT

THIS USE RESTRICTION AGREEMENT (this “**Agreement**”) is made and effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between [GRANT RECIPIENT], a [type, and state of organization] (“**Grantor**”) and the Department of Administration, as a representative of the State of Wisconsin (“**Grantee**”).

### WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property (the “**Property**”) located in the City of [ ], [ ] County, Wisconsin, and more particularly described on Exhibit A hereto;

WHEREAS, under Chapter 196, the Legislature has found and determined that it is in the public interest, and it is the public policy of Grantee, to commission the construction, operating, and maintenance of broadband facilities (similar to the one constructed by the Grantee (the “**Facility**”)) for purposes of expanding internet access to rural areas of Wisconsin;

WHEREAS, pursuant to Section 13.48 (30) of the Wisconsin Statutes and a Grant [and Security] Agreement dated [ ] (the “Grant Agreement”), Grantee has made a grant in the amount of [ ] Dollars (\$[ ]) from general fund supported borrowing to aid in the construction, operating, and maintenance of a broadband facility under Chapter 196;

WHEREAS, pursuant paragraph (d) of Wis. Stat. §13.48 (30) (the “**Act**”), if the State of Wisconsin’s Building Commission authorizes borrowing under par. (c) of the Act, and if, for any reason, a grant funded from the proceeds of such borrowing is not used for the construction of broadband infrastructure, as specified in par. (b) of the Act, the State shall retain an ownership interest in the Broadband Facility funded from the grant equal to the amount of the Grant;

WHEREAS, Article VIII, Section 7 of the Wisconsin Constitution establishes limited purposes for which general fund supported borrowing may be used and, as such, Grantee’s grant to Grantor (the “**Grant**”), must result in Grantee acquiring an interest in property for public purposes;

NOW, THEREFORE, in consideration of the Grant, the premises, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1.0 Grant; Purpose. Grantor hereby voluntarily grants and conveys to Grantee, and Grantee hereby accepts, a use restriction easement over the Property for a period of [twenty (20) years from the effective date hereof] (the “**Term**”), which use restriction easement shall be of the nature and character and to the extent and on the terms and conditions set forth herein. It is the purpose of this Agreement to assist Grantor in the construction of the Broadband Facility.

2.0 Restrictions. In furtherance of the foregoing, Grantor covenants, on behalf of itself and its successors and assigns, which covenants shall run with and bind the Property during the Term, the Property shall primarily be used as broadband facility to provide the agreed upon level of internet service to the required areas and that any activity on or use of the Property inconsistent with such primary use and the purpose of this Agreement is prohibited.

3.0 Reserved Rights. Grantor hereby reserves to itself, and its successors and assigns, all rights accruing from ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited by or inconsistent with the purpose of this Agreement.

4.0 Rights of Grantee. To accomplish the purpose of this Agreement, the following rights are hereby granted to the Grantee:

(e) Grantee shall have the right to enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Agreement, as provided in Paragraph 5 hereof, provided that (except in cases where Grantee reasonably determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Agreement that would significantly impair the public purposes to be served by this Agreement) such entry shall be upon prior reasonable notice in writing to Grantor.

(f) Grantee shall have the right to prevent any activity on or use of the Property that is inconsistent with the purpose and terms of this Agreement, as provided in Paragraph 5 hereof.

5.0 Grantee's Remedies.

(g) Acquisition of Pro Rata Ownership Interest. If Grantee determines that a violation of the terms of this Agreement has occurred or is threatened by Grantor, then it shall give written notice to Grantor of the same, and Grantor shall have a thirty (30) day period after the receipt of such notice in which to cure such violation. If Grantor fails to cure such a violation within thirty (30) days after receipt of notice to do so from Grantee, then Grantor, within ten (10) days after the expiration of the cure period, shall deliver to Grantee a deed in substantially the form attached hereto as Exhibit B, transferring [ %] tenant-in-common interest in the Property to Grantee, which percentage reflects the proportion that the dollar amount of the Grant bears to the Total Project Cost as established under the Grant and Security Agreement [of even date herewith], ("Grant Agreement") between the Grantee and the Grantor. Immediately upon conveyance to Grantee of the foregoing tenant-in-common interest, Grantee shall have the unilateral right and option to reconvey such interest to Grantor for a purchase price equal to the

original amount of the Grant. Such conveyance shall be separate from and in addition to any conveyance pursuant to the Grant Agreement.

(h) Injunctive Relief. Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Agreement, to enjoin the violation, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to such violation.

(i) Scope of Relief. Grantee's rights under this Paragraph 5 apply equally in the event of either actual or threatened violations of the terms of this Agreement. Grantor agrees that Grantee shall be entitled to the injunctive relief described in Paragraph 5(b) hereof, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Agreement. The remedies described in this Paragraph 5 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

(j) Costs of Enforcement. All reasonable costs incurred by Grantee in successfully enforcing the terms of this Agreement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in such a judicial action, then Grantee shall pay Grantor's costs and expenses relating thereto.

(k) Forbearance. Forbearance by Grantee in exercising its rights under this Agreement in the event of any breach of any term of this Agreement by Grantor shall not be deemed or construed to be a waiver by Grantee of such breach or of any subsequent breach of the same or any other term of this Agreement or of any of Grantee's rights under this Agreement. No delay or omission in the exercise by Grantee of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

(l) Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription.

(m) Acts Beyond Grantor's Control. Notwithstanding anything to the contrary contained in this Agreement, Grantee shall not be entitled to bring any action against Grantor for any change in use of the Property resulting from causes beyond Grantor's reasonable control, including, without limitation, fire, flood, storm, and earth movement; or from any action or inaction by Grantor required by local, state, or federal laws or regulations.

6.0 No Public Access. No right of access by the general public to any portion of the Property is granted by this Agreement.

7.0 Costs, Liabilities, Taxes, and Environmental Compliance.

(n) Costs, Legal Requirements, and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of liability insurance coverage in the minimum amount of \$[ ] (adjusted from time to time by the percentage change from the date hereof in the Consumer Price Index – All Urban Consumers, All Items, 1982-84 = 100, or if such index is no longer published, then a similar generally accepted index of price inflation). Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Agreement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements.

Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively “taxes”), including any taxes imposed upon, or incurred as a result of this Agreement, and shall furnish Grantee with satisfactory evidence of payment upon request.

No Litigation. Grantor represents and warrants that, to the best knowledge of Grantor, there is no pending or threatened litigation in any way affecting, involving, or relating to the Property and no civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor believes would form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

Compliance with Environmental Laws. Grantor represents and warrants that no substance has been, is or will be present, used, stored, deposited, treated, recycled or disposed of on, under, in or about any real estate now or at any time owned or occupied by the Grant Recipient (“**Property**”) during the period of Grant Recipient’s ownership or use of the Property in a form, quantity or manner which if known to be present on, under, in or about the Property would require clean-up, removal or some other remedial action (“**Hazardous Substance**”) under any federal, state or local laws, regulations, ordinances, codes or rules (“**Environmental Laws**”), (ii) Grant Recipient has no knowledge, after due inquiry, of any prior use or existence of any Hazardous Substance on the Property by any prior owner of or person using the Property, (iii) without limiting the generality of the foregoing, Grant Recipient has no knowledge, after due inquiry, that the Property contains asbestos, polychlorinated biphenyl components (PCBs) or underground storage tanks, (iv) there are no conditions existing currently or likely to exist during the term of this Agreement which would subject Grant Recipient to any damages, penalties, injunctive relief or clean-up costs in any governmental or regulatory action or third-party claim relating to any Hazardous Substance, (v) Grant Recipient is not subject to any court or administrative proceeding, judgment, decree, order or citation relating to any Hazardous Substance, and (vi) Grant Recipient in the past has been, at the present is, and in the future will remain in compliance with all Environmental Laws. Grant Recipient

shall indemnify and hold harmless each of the Commission and the Department of Administration, their officers, employees and agents from all loss, cost (including reasonable attorneys' fees and legal expenses), liability and damage whatsoever directly or indirectly resulting from, arising out of, or based upon (1) the presence, use, storage, deposit, treatment, recycling or disposal, at any time, of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, (2) the violation or alleged violation of any Environmental Law, permit, judgment or license relating to the presence, use, storage, deposit, treatment, recycling or disposal of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from Property, or (3) the imposition of any governmental lien for the recovery of environmental clean-up costs expended under any Environmental Law. Grant Recipient shall immediately notify the Department of Administration in writing of any governmental or regulatory action or third-party claim instituted or threatened in connection with any Hazardous Substance described above on, in, under or about the Property.

Control. Nothing in this Agreement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), or similar laws imposing legal liability on the owner or operator of real property.

#### 8.0 Extinguishment; Condemnation.

(o) Extinguishment. If circumstances arise in the future that render the purpose of this Agreement impossible to accomplish, then this Agreement can be terminated or extinguished, whether in whole or in part, only by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the original amount of the Grant.

Condemnation. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in-lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Agreement, in whole or in part, then Grantor and Grantee shall act jointly to recover the full value of Grantor's interest in the Property subject to the taking or in-lieu purchase and all direct or incidental damages resulting therefrom (the "Award"), from which Award Grantee shall be entitled to collect an amount equal to the original amount of the Grant, plus reasonable interest calculated from the date hereof, and any expenses reasonably incurred by Grantee in connection with the taking or in-lieu purchase; provided, however, that if the Award is less than such original Grant amount plus such reasonable interest, then Grantee shall be entitled to recover its pro rata share of the Award.

9.0 Subsequent Transfers. Grantor agrees to incorporate the terms of this Agreement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any such interest at least thirty (30) days prior to the date of such transfer. The failure of Grantor to perform any act required by this Paragraph 9 shall not impair the validity of this Agreement or limit its enforceability in any way.

10.0 Estoppel Certificates. Grantee shall within thirty (30) days after its receipt of a written request by Grantor therefor, execute and deliver to Grantor, or to any party designated by Grantor, an estoppel certificate, which certifies Grantor's compliance with any obligations of Grantor contained in this Agreement. Such certification shall be limited to the use being made of the Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within twenty (20) days after its receipt of Grantor's written request therefor and shall execute and deliver the requested certificate within ten (10) days after such inspection.

11.0 Termination. In the event that the person charged with the administration of this Agreement on behalf of Grantee (e.g., the [Secretary of the Department of Administration]) determines that the purposes to be served by the Grant have been satisfied, Grantee may terminate this Agreement and its rights hereunder at any time by recording a notice of termination in the office of the Register of Deeds for [\_\_\_\_\_]County, Wisconsin. Grantee shall deliver a copy of such notice of termination to Grantor.

12.0 Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either delivered personally or sent by first class mail, postage prepaid, addressed as follows:

If to Grantor: [ ]

If to Grantee: State of Wisconsin  
Wisconsin Department of Administration  
101 East Wilson Street, 10<sup>th</sup> Floor  
Madison, WI 53702  
Attention: Chief Legal Counsel



or to such other address or by such other means of common communication as either party from time to time may designate by written notice to the other.

13.0 Recording. Grantee shall record this Agreement in the office of the Register of Deeds for [ ] County, Wisconsin, and may re-record it at any time as may be required to preserve its rights under this Agreement.

14.0 General Provisions.

(p) Controlling Law. This Agreement shall be governed by the laws of the State of Wisconsin and the United States. Any legal action regarding this Agreement, as amended, or its provisions shall be subject to Wis. Stat. ch. 227. Any Wis. Stat. ch. 227 proceeding or dispute or controversy arising under this Agreement must be brought in a court of competent jurisdiction in Dane County, Wisconsin Circuit Court or the Federal District Court for the Western District of Wisconsin. The Parties consent to the jurisdiction of such court and waive any objections to such jurisdiction.

Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Agreement shall be liberally construed to effect the primary purpose of this Agreement and the public purposes to be served by the making of the Grant. If any provision in this Agreement is found to be ambiguous, then an interpretation consistent with the primary purpose of this Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid.

Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, is found to be invalid, then the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

Entire Agreement. This instrument together with the Grant Agreement sets forth the entire agreement of the parties with respect to this Agreement and supersedes all prior discussions, negotiations, understandings, or agreements relating to such matters, all of which are merged herein.

No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of title in any respect.

Successors. The covenants, terms, conditions, and restrictions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in with the Property during the Term.

Termination of Rights and Obligations. A party's rights and obligations under this Agreement terminate upon transfer of that party's interest in this Agreement (as to

Grantee) or the Property (as to Grantor), except that liability for acts or omissions occurring prior to transfer shall survive transfer.

Captions. The captions in this Agreement have been inserted solely for convenience of reference and shall have no effect upon its construction or interpretation.

Amendment. If circumstances arise under which an amendment to or modification of this Agreement would be appropriate, Grantor and Grantee may jointly amend this Agreement by a written instrument recorded in the office of the Register of Deeds for [ ] County, provided that any such amendment shall not diminish the purpose of this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and delivered the same as of the day and year first above written.

GRANTOR:

By: \_\_\_\_\_

Name

Title:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Secretary

STATE OF WISCONSIN                    )  
  ) SS.  
COUNTY OF [    ]                            )

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_ and \_\_\_\_\_, the President and Secretary, respectively, of the [            ], a [    ], and acknowledged that they executed the foregoing instrument on behalf of said entity.

[NOTARIAL SEAL]

\_\_\_\_\_  
Name Printed: \_\_\_\_\_  
Notary Public  
County of [    ], State of Wisconsin  
My Commission: \_\_\_\_\_

GRANTEE:

**STATE OF WISCONSIN**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[INSERT STATE NOTARY BLOCK]

This instrument was drafted by \_\_\_\_\_.

**EXHIBIT A**

**Legal Description of the Property**

[Insert Legal Description]

**EXHIBIT B**

**Form of Deed**

See Attached

**WARRANTY DEED**

Document Number

Document Name

**THIS DEED,** made between [ ]  
[ ].

("Grantor," whether one or more),

and STATE OF  
WISCONSIN

("Grantee," whether one or more).

Grantor, for a valuable consideration, conveys to Grantee a [ ]%, undivided, tenant-in-common interest in the following described real estate, together with the rents, profits, fixtures and other appurtenant interests, in [ ] County, State of Wisconsin ("Property") (if more space is needed, please attach addendum):

[INSERT LEGAL DESCRIPTION]

Recording Area

Name and Return Address

[INSERT STATE OF WISCONSIN  
ADDRESS]

[INSERT PIN]

Parcel Identification Number (PIN)

This homestead property.

(~~is~~) (is not)

Grantor warrants that the title to the Property is good, indefeasible in fee simple and free and clear of encumbrances except: \_\_\_\_\_.

Dated \_\_\_\_\_.

[ ]

By:

(SEAL)

**AUTHENTICATION**

Signature(s)

authenticated on .

\*

TITLE: MEMBER STATE BAR OF WISCONSIN

(If not,  
authorized by § 706.06, Wis. Stats.)

THIS INSTRUMENT DRAFTED BY:

**ACKNOWLEDGMENT**

STATE OF WISCONSIN )

) ss.

COUNTY )

Personally came before me on ,

the above-named

to me known to be the person(s) who executed the foregoing  
instrument and acknowledged the same.

\*

Notary Public, State of Wisconsin

My Commission (is permanent) (expires: )

(Signatures may be authenticated or acknowledged. Both are not necessary.)

**NOTE: THIS IS A STANDARD FORM. ANY MODIFICATIONS TO THIS FORM SHOULD BE CLEARLY IDENTIFIED.**  
**WARRANTY DEED** **STATE BAR OF WISCONSIN**  
**FORM NO. 1-2003**

\* Type name below signatures.